

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

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Massimiliano Pincione, :  
Plaintiff, :  
vs. :  
David Dale :  
3616 Ridgeway Terrace :  
Falls Church, Virginia 22044 :  
Defendant. :  
----- X CASE NO.: 1:11cv 367 AJT/IDD  
David Dale  
and :  
SMI Hyundai Corporation Ltd. :  
Counterclaim Plaintiffs :  
v. :  
Massimiliano Pincione :  
and :  
H.R.H. Prince Khaled Bin Al Waleed :  
Counterclaim Defendants :  
----- X

**MASSIMILIANO PINCIONE'S MOTION TO DISMISS COUNTERCLAIMS**

Plaintiff/Counterclaim Defendant, Massimiliano Pincione ("Pincione"), by and through his undersigned counsel and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, respectfully moves this Court to dismiss the Counterclaims of Defendant/Counterclaim Plaintiff,

David Dale (“Dale”), and Counterclaim Plaintiff, SMI Hyundai Corporation Ltd. (“SMI Dubai”), a corporation registered in Dubai. In support of this motion, Pincione respectfully states as follows:

1. Dale has sued Pincione for breach of contract, breach of fiduciary duty, fraud, and conversion. Dale’s Counterclaims, however, do not allege or establish that Dale had a contract with Pincione or that Pincione owes Dale money or that any relationship between them creates a fiduciary duty on the part of Pincione in favor of Dale. Dale does not allege a debt, duty or obligation of Pincione that would entitle Dale to assert these Counterclaims against him.

2. Once Dale’s Counterclaims fail, so must those of SMI Dubai. Dismissal of Dale’s Counterclaims leaves SMI Dubai, a nonparty, as the sole Counterclaim Plaintiff against Pincione. Under Rules 13 and 20, SMI Dubai cannot be a Counterclaim Plaintiff in these circumstances because SMI Dubai is not otherwise a party to this suit.

WHEREFORE, for these reasons and for the reasons stated in Pincione’s Memorandum of Law in Support of his Motion to Dismiss Counterclaims, Pincione respectfully requests that this Court dismiss the Counterclaims of David Dale for failure to state claims upon which relief can be granted.

Dated: May 23, 2011

**Respectfully Submitted,**

By: \_\_\_\_\_ /s/  
**Sean F. Murphy (Va. Bar No. 28415)**  
McGuire Woods, LLP  
1750 Tysons Boulevard  
McLean, Virginia 22102-4215  
Telephone No. (703) 712-5487  
Facsimile No. (703) 712-5243  
sfmturphy@mcguirewoods.com

**OF COUNSEL:**

Jay G. Safer

Jason Nardiello

**LOCKE LORD BISSELL & LIDDELL LLP**

3 World Financial Center

New York, New York 10281-2101

Telephone No.: (212) 415-8600

Facsimile No.: (212) 303-2754

[JSafer@lockelord.com](mailto:JSafer@lockelord.com)

[JNardiello@lockelord.com](mailto:JNardiello@lockelord.com)

ATTORNEYS FOR PLAINTIFF/COUNTERCLAIM DEFENDANT,  
MASSIMILIANO PINCIONE

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23 day of May, 2011, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

James R. Tate (Va. Bar. No. 6241)  
Douglas E. Bywater (Va. Bar. No. 9137)  
Tate, Bywater & Fuller PLC  
2740 Chain Bridge Road  
Vienna, Virginia 22181  
Telephone: 703-938-5100  
Facsimile: 703-255-1097  
[jtate@tatebywater.com](mailto:jtate@tatebywater.com)  
[debywater@tatebywater.com](mailto:debywater@tatebywater.com)

/s/

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**Sean F. Murphy (Va. Bar No. 28415)**  
McGuire Woods, LLP  
1750 Tysons Boulevard  
McLean, Virginia 22102-4215  
Telephone No. (703) 712-5487  
Facsimile No. (703) 712-5243  
[sfmurphy@mcguirewoods.com](mailto:sfmurphy@mcguirewoods.com)

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